HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3014 OF 2005.

Appasaheb Sitaram Patil (deceased)
Through Legal Heirs and legal
representatives. ..Petitioner.

Versus.

Vasant Rajaram Babar- Patil
and others. ..Respondents.

Shri. Anilkumar Patil for the Petitioners.

Shri. B. A. Walimbe instructed by Shri. R. V. More
for the respondent Nos. 1 to 6.

CORAM: S.B.MHASE, J.

DATE : MARCH 18, 2006.

P.C.

1. Heard learned counsel Shri. Anilkumar Patil appearing on behalf of the petitioner.

2. The order dated January 31, 2005 passed in Regular Darkhast No. 2 of 2004 by the Civil Judge, Junior Division, Kavathe-Mahankal is under challenge before this Court in this petition. The decree in Regular Civil Suit No. 34 of 1979 was passed on July 30, 1980 to the effect that the plaintiff is having 1/6th share in the suit property and the partition of the same is to be effected and the possession is to be given

accordingly. Partition was to be effected by the Collector or any Gazetted Officer subordinate to the Collector as per Section 54 of the Code of Civil Procedure, 1908 and the partition of the house properties is to be effected by the Court Commissioner. The mesne profit was granted under Order-XX rule-12(1)(c) of the Code of Civil Procedure, 1908. The said decree was challenged in Regular Civil Appeal No. 268 of 1980. The appeal was partly allowed. The decree was modified in so far as the house property is concerned and the decree granting 1/6th share in the house property was set aside. Thus, ultimately, the decree survived in respect of the agricultural lands, the partition of which is to be effected by the Collector or by his Subordinate Gazetted Officer as per the provisions of Section 54 of the code of Civil Procedure, 1908.

2. It appears that earlier execution petition bearing No. 12 of 1993 was filed but it was disposed of on 18.2.2003. Thereafter the present Darkhast bearing No. 2 of 2004 was filed. This execution is objected by the petitioner - judgment debtor on a ground of limitation as the execution petition has not been filed within a period of 12 years from the date of decree. Relying upon the judgment of this Court reported in AIR 2001 BOM 303, the trial Court has held that the law of

limitation is not applicable to the decree passed in partition suit. It is well established principle that when in partition suit preliminary decree is passed, to convert the said decree into final decree is the obligation of the Court and till it is converted into final decree the suit is supposed to be pending. Under section 54 of the Code of Civil Procedure though there is a formal practice of filing execution before the civil Court. However, in view of the provisions of section 54 of the Code, the said application has to be filed before the Collector or any Gazetted Officer subordinate to the Collector. The Civil Court has no power to execute the decree in a partition suit in respect of the agricultural lands.

3. The reference can be made to the reported judgment of this Court in the matter of **Anandrao v/s. Azizul Haq.** reported in **1997(3) Mh.L.J. 419.** Thus, this Court finds that there is no substance in this petition. It is hereby rejected.

(S.B.MHASE, J.)